

Guidance Document 76-32, Letter to Sentara Healthcare on Confidentiality Agreements,
April 24, 2002.

April 24, 2002

Mr. Bertram Reese
Vice President, Information Technology
Sentara Healthcare
1151 Azalea Garden Road, Suite 100
Norfolk, Virginia 23502

Dear Mr. Reese:

I am writing in reply to your recent letter to the Virginia Board of Pharmacy (“Board”) in which you requested that the Board enter into a “business associate confidentiality agreement” with Sentara Healthcare (“Sentara”). Your letter explained that Sentara is required by the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) to have each “vendor” [*i.e.*, “business associate”] that may have been provided access by Sentara to “protected health information” (“PHI”) agree to ensure the integrity and confidentiality of such information and protect against its unauthorized use or disclosure.

We assume that you have asked the Board of Pharmacy to enter into the confidentiality agreement because you determined that Sentara has provided protected health information to the Virginia Department of Health Professions (“Department”) in connection with pharmacy inspections and/or health practitioner investigations. It is our conclusion, however, that neither the Board of Pharmacy nor the Department of Health Professions is a “business associate” of Sentara, as defined by HIPAA, merely due to the fact that Sentara has provided or may provide PHI in the course of such inspections or investigations. *45 CFR § 164.502(e)*. We know of no other relationship that exists between Sentara and either the Department or any of its health regulatory boards that would require the execution of the proposed confidentiality agreement. We therefore regard it as inapplicable to the Department and its boards.

For your assurance, however, we direct you to (1) the provisions of HIPAA that allow for the use and disclosure of PHI without the consent or authorization of the subject individual for the purpose of “health oversight activities,” including administrative investigations, inspections, licensure or disciplinary actions, and administrative proceedings, *45 CFR § 164.512(d)*, and (2) the provisions of state law that require health

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regulatory boards to treat information received in connection with possible disciplinary proceedings as strictly confidential, subject to specified disclosure limitations, *Va. Code* § 54.1-2400.2. *See also Va. Code* §§ 2.2-3705.A.5 and 2.2-3705.A.13.

Please do not hesitate to contact me at (804) 662-9966 if you have any questions regarding the Department's position concerning your request or if you wish to discuss this matter further.

Sincerely,

Gail D. Jaspen
Chief Deputy Director

cc: Robert A. Nebiker
Director, Department of Health Professions

Elizabeth Scott Russell
Executive Director, Virginia Board of Pharmacy

Howard M. Casway, Esquire
Assistant Attorney General